

(b) *Members of Congress.* A Member (as defined in section 2106 of title 5, United States Code) is not eligible to make an election.

(c) *Persons without social security eligibility.* An individual is not eligible to make an election if that individual is not eligible for social security coverage.

§ 846.713 Former spouse consent requirement.

An election of FERS coverage cannot become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under part 838 of this chapter.

ELECTION PROCEDURES

§ 846.721 Electing FERS coverage.

(a) To elect FERS coverage, an employee must submit a completed FERS Election of Coverage form (SF 3109) and any additional documentation that may be required under § 846.722 (relating to the former spouse consent requirement) to the employing office no later than the close of business on December 31, 1998.

(b) Any writing signed by the employee and filed with the employing office may be treated as an election for the purpose of establishing the date of the election of FERS coverage if the employee intends that document to be an election, but the employee (or, if the employee dies after filing the election but before completing the SF 3109, the survivor) must submit a completed SF 3109 to confirm any such election.

§ 846.722 Former spouse's consent to an election of FERS coverage.

(a) *Employee actions.* (1) If the employee is subject to a qualifying court order, the employee must submit to the employing office a completed—

(i) SF 3110, Former Spouse's Consent to FERS Election, to document the former spouse's consent to the FERS coverage; or

(ii) SF 3111, Request for Waiver, Extension, or Search, to request a waiver of the former spouse consent requirement or to request an extension of the time limit for obtaining a former spouse's consent or amendment of the court order.

(2) If the employee states on the SF 3109, the FERS Election of Coverage form, that he or she does not know whether he or she is subject to a qualifying court order, the employee must submit to the employing office a completed SF 3111, Request for Waiver, Extension, or Search, to request OPM to determine whether it has a qualifying court order relating to the employee.

(b) *OPM actions—*(1) *Waiver of former spouse consent requirement—*(i) *Grounds for waiver.* OPM's authority to approve a waiver of the former spouse consent requirement is limited to cases in which the former spouse's whereabouts cannot be determined or exceptional circumstances make requiring the former spouse's consent inappropriate.

(ii) *Whereabouts cannot be determined.* OPM will waive the former spouse consent requirement upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(A) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(B)(i) Affidavits by the employee and two other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the spouse; and

(2) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(iii) *Exceptional circumstances.* OPM will waive the former spouse consent requirement based on exceptional circumstances if the employee presents a judicial determination finding that—

(A) The case before the court involves a Federal employee who is in the process of electing FERS coverage and the former spouse of that employee;

(B) The former spouse has been given notice and an opportunity to be heard concerning this proceeding;

(C) The court has considered sections 301 and 302 of the FERS Act, Pub. L. 99-335, 100 Stat. 517, and this section as they relate to waiver of the former spouse consent requirement for an employee with a former spouse to elect FERS coverage; and